ed in the Act of 1906 that, "This act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits, etc." *Held,* by EARL OF HALSBURY, LORD MERSEY, and LORD PARKER OF WADDINGTON, (EARL LOREBURN and LORD ATKINSON dissenting)—that the claimant was remunerated by a share in the profits within the meaning of the above provision, and was therefore excluded from the Act and was not entitled to compensation. *Costello* v. *Owners of the Ship Pigeon,* (1913) A. C. 407.

The question as to who is a "workman" within the meaning of the Compensation Acts, especially in cases where the employee shares in the profits, is unsettled. It is most probably due to the opposing theories in regard to the construction of these acts. On the one hand it is maintained that they are derogatory to the common law and should be construed strictly, while the contrary premise is that they are remedial and therefore should be construed liberally. The decision in the principal case is undoubtedly based on a strict construction of the statute and is justified by other English cases. *Boon* v. *Quance,* (1909) 102 L. T. 443; *Admiral Fishing Co.* v. *Robinson,* (1910) 102 L. T. 203; *Aberdeen Steam Trawling & Fishing Co.* v. *Gill,* (1907) 45 Scotch L. R. 247; *Whelan* v. *Great Northern Steam Fishing Co.* (1909) 100 L. T. 913. As opposed to this view, it has been held that the injured person will be held to sustain the relation of a workman where there is an absence of any proof of partnership or joint adventure in the course of trading. *Jamieson* v. *Clark,* (1908) 46 Scotch L. R. 73; *Carswell* v. *Sharpe et al.* (1910) 47 Scotch L. R. 335.

NEW TRIAL—COMMENTS OF COUNSEL.—In a personal injury action which was being tried for the third time, the case depended almost entirely upon the credibility of the witnesses. Plaintiff's counsel in his argument to the jury, in referring to certain statements made by the opposing counsel and which reflected on the veracity of plaintiff's witnesses, said that he had canvassed the neighborhood and talked with witnesses, and that if the case was framed up, he (plaintiff's counsel) and not the witnesses, was responsible for it; that defendant's counsel had been unfair in keeping out testimony, and that he had unduly prolonged the trial by making technical objections which kept plaintiff out of justice. *Held,* prejudicial misconduct notwithstanding the trial court sustained an objection to these statements at the time they were made and expressly directed the jury to disregard them. *Appel* v. *Chicago City Ry. Co.,* (Ill. 1913) 102 N. E. 1021.

The courts are not all agreed that a reversal is proper where the trial court has sustained an objection to the improper remarks and has done all in its power to counteract their influence upon the jury. Taken literally, the holding of some courts would absolutely prevent a reversal in such cases. *Ry. Co.* v. *Parker,* 127 Ga. 471; *Kern* v. *Bridewell,* 119 Ind. 471; *Greenlee* v. *Greenlee,* 93 N. C. 278; *Traction Co.* v. *Parks,* Tex. 97 S. W. 510; *Perkins* v. *Guy,* 55 Miss. 153; *Kearney* v. *State,* 101 Ga. 803; *Grubb* v. *State,* 117 Ind. 277; *State* v. *Emery,* 79 Mo. 461; *Alabama R. R. Co.* v. *Frazier,* 93 Ala. 45. This unqualified statement of the doctrine is hardly justifiable on principle and what is perhaps the true rule and the one supported by the great weight

of authority is stated in *Railroad Co.* v. *Burr,* 82 Oh. St. 133, in these words; "While it is true that courts of last resort have frequently, though not uniformly held the rule to be that the prejudice, if any, may be eliminated or cured by the prompt withdrawal of the objectionable statements made by counsel, accompanied by an instruction from the court to the jury to disregard such statements, yet this rule is recognized and applied by the courts in those cases only where it has been made to appear by the record from a consideration of the character of the statements made, that their prejudicial effect has probably been averted by such withdrawal and instruction." *German American Insurance Co.* v. *Harper,* 70 Ark. 305; *Murphy's Executor* v. *Hoagland,* 32 Ky. L. Rep. 839; *Florence Cotton Co.* v. *Field,* 104 Ala. 471; *Sullivan* v. *Railroad Co.,* 119 Ia. 464; *Greenfield* v. *Kennett,* 69 N. H. 419; *Dillingham* v. *Scales,* 78 Tex. 205; *Wagoner* v. *Hazle Township,* 215 Pa. St. 219. As is said in *Railroad Co.* v. *Pritschau,* 69 Oh. St. 447, "It is due to differences in the character of the misconduct rather than to differences of opinion in reviewing courts that it has in some cases been held that the effect of misconduct may be eliminated by instructions, and in others that it cannot be." Cases in which a new trial has been denied but which are distinguishable on this ground are the following: *Railroad Co.* v. *Johnson,* 90 Ga. 500; *Railroad Co.* v. *Johnson,* 116 Ill. 206; *Winter* v. *Sass,* 19 Kans. 556; *Burr* v. *Post,* 56 Nebr. 698; *Kingsley* v. *Finch,* 105 N. Y. S. 968; *Ruddy* v. *Ruddy,* 5 Pa. Co. Ct. 544; *Brennan* v. *Seattle,* Wash. 90 Pac. 434; *People* v. *Lee Ah Yute,* 60 Cal. 95; *Railroad Co.* v. *Moynahan,* 8 Colo. 56; *Hunton* v. *Cream City Co.,* 65 Wis. 323.

PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL IN EXEMPLARY DAMAGES FOR ACTS OF AGENT.—Plaintiff, a passenger, was wrongfully ejected from a train of defendant company by a train agent, who humiliated and insulted him. Due to the exposure following the ejection, the plaintiff became sick and died after this suit was brought. *Held,* in sustaining a verdict for plaintiff's administratrix for $11,115, that a principal is liable for exemplary damages for the wrongful, wanton, and oppressive acts of his agents when acting within the scope of their employment, although the particular acts were not authorized or ratified. *Forrester* v. *Southern Pacific Co.,* (Nev. 1913.) 134 Pac. 753.

It is well settled that a principal or master may be liable to exemplary damages for the acts of his agent or servant in proper cases, but irreconcilable conflict exists in determining the essential ingredients of a proper case. *R. R. Co.* v. *Hurst,* 36 Miss. 660; *Hopkins* v. *At. & St. Lawrence R. R.* 36 N. H. 9; *R. R. Co.* v. *Blocher,* 27 Md. 277. The better rule seems to be that a principal will not be held liable for exemplary damages unless he has previously authorized or subsequently ratified the tortious act of the agent, or was grossly negligent in selecting the offending agent. *The Amiable Nancy,* 3Wheat. 546; *Burns* v. *Campbell,* 71 Ala. 271; *Grund* v. *Van Vleck,* 69 Ill. 478; *Cleghorn* v. *N. Y. etc. R. R. Co.* 56 N. Y. 44; *Hill* v. *New Orleans etc. R. R. Co.,* 11 La. Ann. 292; *Mace* v. *Reed,* 89 Wis. 440; *Hagan* v. *Providence & Worcester R. R. Co.* 3 R. I. 88; *Robertson* v. *Wylde,* 2 M. & Rob. 101. The